

REMARKS

In the Office Action dated May 13, 2005, claims 1-18 and 23-30, in the above-identified U.S. patent application were rejected. Reconsideration of the rejections is respectfully requested in view of the above amendments and the following remarks. Claims 1-3, 5-18 and 23-30 remain in this application, claims 4 and 19-22 have been canceled.

Claims 3-8, 10, 12, 14-18 and 23-30 were rejected under 35 USC §112, second paragraph, as indefinite. Claim 3 has been amended as suggested in the office action, claim 4 has been canceled and claims 23-26 have been amended to clarify that an analyte is detected. In view of the above amendments and discussion, applicants request that these rejections be withdrawn.

Claims 1-8, 15-18 and 23-27 were rejected under 35 USC §103(a) as unpatentable over Scholtissek in view of Abuknesha. Applicants respectfully contend that Scholtissek is mischaracterized in the office action. Scholtissek discloses a detection method and apparatus wherein a carrier is provided which contains an opaque subregion with an immobilized analyte binding partner bound to a labeled tracer. The sample (e.g. a gaseous medium) is passed through the carrier and the analyte contained in the carrier is selectively absorbed by binding to the immobilized binding partner. This leads to a displacement of the labelled tracer which is subsequently analyzed in a transparent subregion of the carrier.

Thus, Scholtissek differs from the present invention by the following features:

(i) Scholtissek's device does not contain a first binding partner of the analyte in an elutable form.

(ii) A complex consisting of the analyte and the first binding partner and uncomplexed first binding partner is not eluted from Scholtissek's device; in fact no substance at all is eluted from the device since the displaced labelled tracer is detected in a subregion of the substrate, i.e. within the device.

Abuknesha discloses an apparatus suitable for the immunological detection of an analyte in an gaseous medium wherein the apparatus includes a carrier (which is a tape carrying detection reagents, e.g. analyte binding partner). The sample is applied to a portion of the tape and subsequently this portion is transported to a detector, wherein the analyte is detected.

The teaching of Abuknesha differs from the present invention in that no complex consisting of an analyte and an analyte binding partner or any uncomplexed binding partner is eluted from the carrier. Applicants point out that Abuknesha requires, as an essential feature, the presentation of a portion of the carrier to the detector to permit immunological analysis of the sample for analyte species. Thus, no substance whatsoever is eluted from the carrier.

Thus, none of the prior art references discloses or suggests the elution of a complex between analyte and analyte binder from a first carrier matrix in order to allow isolation (claim 1) or detection (claims 3 and 23) of a location which is different from the first carrier matrix. As pointed out above, neither Scholtissek nor Abuknesha allows analyte elution from the carrier matrix. Thus, applicants contend that combining the prior art documents would not lead to the presently claimed

invention in the absence of improper hindsight. In view of the above discussion, applicants contend that the combination of Scholtissek and Abuknesha does not render the presently claimed invention obvious and request that this rejection be withdrawn.

Claims 9-14 and 28-30 were rejected under 35 USC §103(a) as unpatentable over Scholtissek in view of Abuknesha further in view of Schlipfenbacher. As discussed above, the combination of Scholtissek and Abuknesha does not suggest the elution of a complex between analyte and analyte binder from a first carrier matrix in order to allow isolation or detection at a location which is different from the first carrier matrix. Schlipfenbacher does not cure this deficiency as Schlipfenbacher discloses a conventional test carrier for analyses of a sample liquid. There is no suggestion to use the test carrier for the determination of an analyte from a gaseous phase. In addition, Schlipfenbacher does not suggest or disclose an elutable binding partner for the analyte or isolation or detection at a location which is different from the first carrier matrix. In view of the above discussion, applicants request that this rejection be withdrawn.

Applicants respectfully submit that all of claims 1-3, 5-18 and 23-30 are now in condition for allowance. If it is believed that the application is not in condition for allowance, it is respectfully requested that the undersigned attorney be contacted at the telephone number below.

In the event this paper is not considered to be timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fee for such an

extension together with any additional fees that may be due with respect to this
paper, may be charged to Counsel's Deposit Account No. 02-2135.

Respectfully submitted,

By

A handwritten signature in black ink, appearing to read 'M. C. Kitts', with a stylized flourish at the end.

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